

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

CALDERA PROPERTIES - LEWES/
REHOBOTH VII, LLC, : C.A. No. 07C-12-002 THG

Plaintiff, :

v. :

THE RIDINGS DEVELOPMENT, LLC,
CENTEX HOMES, and BEAZER HOMES
CORP., :

Defendants. :

AND :

CALDERA PROPERTIES - LEWES/
REHOBOTH VII, LLC, :

Plaintiff, :

v. :

THE RIDINGS DEVELOPMENT, LLC,
CENTEX HOMES, BEAZER HOMES CORP.,
and TIDEWATER ENVIRONMENTAL
SERVICES, INC., :

Defendants. :

THE RIDINGS DEVELOPMENT, LLC, :

Counterclaim Plaintiff, :

v. :

CALDERA PROPERTIES - LEWES/
REHOBOTH VII, LLC and
RBS CITIZENS, N.A., :

Counterclaim Defendants. :

O R D E R

1) On March 19, 2009, and March 26, 2009, this Court ruled that it was granting summary judgments in favor of RBS Citizens, N.A. (“Citizens”) and Tidewater Environmental Services, Inc. (“Tidewater”). The Court intends to fully develop the facts and expound upon the law regarding those decisions in a written decision which shall be delivered after the trial in this matter takes place. However, the Court did promise the parties that it would enter a written order on these rulings before trial and this constitutes said order. Fulfilling this promise has been difficult. Trial is scheduled to begin on April 6, 2009. In the past month, briefing ended on six summary judgment motions. The Court also had to review motions to strike briefs and unrequested sur-reply briefs. In the past two weeks, the Court has received six motions *in limine* and responses thereto. Nevertheless, a promise is a promise and this is the written order.

2) Briefly, Caldera Properties-Lewes/Rehoboth VII, LLC (“Caldera”) sued The Ridings Development, LLC (“Ridings”), Centex Homes (“Centex”), and Beazer Homes Corp. (“Beazer”) in Superior Court regarding a land deal which soured. Ridings was supposed to purchase from Caldera two tracks of land in three phases and build 225 residential homes in what would ultimately be one development. Ridings commenced building the infrastructure and a wastewater treatment plan. Construction took place over all the Property. In particular, Ridings built the wastewater treatment plant on property which Caldera owned. Ridings only purchased one phase which consisted of 75 lots. The land deal did not go through regarding the second and third phases. Caldera also filed a suit in the Court of Chancery which included the same defendants as in Superior Court plus Tidewater. Ridings, in turn, filed counterclaims against Caldera and a claim against Citizens. The cases have been consolidated.

3) Citizens holds a recorded first mortgage on the Property in dispute. Tidewater, a public utility which offered wastewater services, was granted, by the Public Service Commission (“PSC”), the Certificate of Public Convenience and Necessity (“CPCN”) to provide wastewater services to the Property.

4) In its counterclaim against Caldera, Ridings argues Caldera has been unjustly enriched and it seeks reimbursement from Caldera for monies spent on construction of the Wastewater Treatment Plant and collection system (“WWTP”) and on the development’s infrastructure. Ridings also filed a claim seeking a determination that to the extent it was successful in obtaining a judgment for unjust enrichment against Caldera, such judgment should be deemed to have an effective date prior to the date the Citizens’ mortgage on the Property was recorded.

5) Tidewater and Ridings were negotiating a contract regarding the purchase of the WWTP when the land deal completely dissolved. In the Chancery action, Caldera requests the Court to order Ridings to convey the WWTP it built to Tidewater as the holder of the CPCN and to order Tidewater to assume ownership and operate the WWTP as provided under the draft of the wastewater services agreement which existed at the time of the final breakdown of negotiations on the land purchase in October, 2007.

6) The first matter I address is Citizens’ summary judgment motion. In its motion, Citizens argues that Ridings is not entitled to a judgment of unjust enrichment and even if it did obtain such a judgment, that judgment could not be turned into a lien which is superior to that of Citizens.

I have not made a final determination on the unjust enrichment issue. For purposes of this motion only, I will assume that Ridings could obtain a judgment against Caldera on the unjust enrichment claim. However, despite that assumption, Ridings never could establish entitlement of

a lien in superior position to Citizens' mortgage. For that reason, Citizens should not be a party in this litigation and the motion for summary judgment is granted in its favor.

Ridings argument is as follows. At the time it granted the mortgage, Citizens was aware Ridings was constructing the infrastructure and WWTP on the mortgaged property. Once Ridings obtains a judgment in this litigation, then that judgment should relate back to the time it started working on the property, which preceded Citizens' recorded mortgage.

Ridings only cites to one Delaware case as authority for this argument, *Holland v. Eastern, Inc.*, 1978 WL 22462 (Del. Ch. Jan. 25, 1978) ("*Holland*"). That case does not remotely support Ridings' position. In *Holland*, the parties sought to establish the priority of easements in the sewer lines and sewage treatment plant in favor of the Cape Windsor Community Association, Inc. Litigation regarding the sewer easements had commenced at the time the mortgagee was loaning the money and obtaining the mortgage. After the mortgage was filed, the Chancery Court granted the easements. In *Holland*, the Chancery Court ruled that the easements were superior to the mortgage and any purchaser would take the property subject to the easements. That law was based upon the law of easements, not judgments. The law which gave legal title to the easements in favor of the Association provided:

"Where, during the unity of title, an apparently permanent and obvious servitude is imposed on one part of an estate in favor of another part, which servitude is in use at the time of severance and is necessary for the reasonable enjoyment of the other part, on a severance of the ownership a grant of the right to continue such use arises by implication of law."

Holland v. Great Eastern, Inc., *supra* at *3, quoting 25 *Am. Jur. 2d*, Easements and Licenses § 27.

Holland is completely irrelevant to Ridings' argument. It might be relevant if Ridings had not officially obtained an easement by way of the Easement Agreement and if the issue was whether Ridings had an easement in the sewer and lines. Instead, in this case, because of the

recorded Easement Agreement, everyone was aware of the easement and everyone, including Citizens, acknowledges Citizens' mortgage is subject to that easement.

Again, the *Holland* issue is not the issue at hand. Instead, the issue is what entity must bear the costs of the construction of the infrastructure and the WWTP. Ridings seeks to recoup those costs from the land by arguing it is entitled to something akin to a mechanic's lien¹ without actually being entitled to a mechanic's lien. Ridings seeks to impose upon the property a lien which it, as the grantee in section 14 of the October 11, 2005, Easement Agreement,² warranted would not be imposed upon the property.

The law in Delaware does not support Ridings' proposition that a party which performs construction on land (and which is not entitled to assert a mechanic's lien) can sue to obtain a judgment based on a claim of unjust enrichment and have that judgment turned into a lien which dates back to the time it first performed any work on the property.

Here, Citizens has the first mortgage. Ridings never will be able to obtain a lien prior to Citizens' mortgage. Citizens is entitled to summary judgment in its favor.

¹Mechanics' liens are purely a statutory remedy and to be entitled to such, strict compliance with chapter 27 of 25 *Del. C.* is required. Ridings cannot in any way comply with that statute.

²In section 14 of the October 11, 2005, Easement Agreement, Ridings covenanted as follows:

14. Liens. Grantee covenants that none of Grantee's contractors, subcontractors, materialmen or laborers shall file or maintain a mechanic's lien, claim or notice of intention to file any lien or claim against or with respect to the Grantor Parcels by reason of the nonpayment by Grantee of amounts due and owing, or claimed to be due and owing, to Grantee's contractors, subcontractors, materialmen or laborers, and Grantee hereby agrees that it shall take any necessary action to bond off any such lien or claim that may be filed or maintained and does hereby indemnify and agree to defend and hold harmless the Grantor against any such lien or claim.

7) The second issue I address is Tidewater's motion for summary judgment. Ridings and Tidewater, over a period of several years, had been negotiating a contract whereby Tidewater would purchase the WWTP that Ridings had built on property which Caldera owns. The last draft, before the final breakdown of negotiations regarding Ridings' purchase of Caldera's property, was reviewed by the parties in September, 2007. The parties to this proposed agreement were Ridings and Tidewater. Caldera was not a party to the proposed agreement. Although Tidewater disputes Caldera's contentions that this document was in its final form and had no other issues to be worked out, there is no dispute about the following facts. The contract was totally, completely, and EXPLICITLY contingent upon Ridings purchasing all 225 lots. To put it another way, the payment structure set forth in the agreement, the negotiations leading to the agreement and the terms and conditions of the agreement were based upon Ridings purchasing all 225 lots. Ridings did not purchase all 225 lots. It only purchased 75.

No legal authority exists to support Caldera's contention that this Court should force parties to enter into an agreement whose condition precedent cannot be met.

Additionally, to the extent Caldera argues that Tidewater is indispensable because of the CPCN, I rule that issues concerning the CPCN go before the PSC and not this Court.

Thus, Tidewater's motion for summary judgment is granted.

IT IS SO ORDERED THIS _____ DAY OF APRIL, 2009.

JUDGE

cc: Prothonotary's Office
Attorneys